First, it is to be noted that the standover was not refused by the second appellant against whom the allegation of malice and vindictiveness was made but by his superior officer. Secondly, under the law the tax payable under a notice of assessment shall be due and payable at the place specified in the notice whether or not the person appeals against the assessment. The Director General, may, however, allow payments by instalments of such amount as he may determine (section 103(3) of the Income Tax Act).

We will therefore allow the appeal and set aside the order of the learned judge. Costs to the appellants here and below to be taxed. Deposit to be refunded.

Appeal allowed.

Solicitors: *L.H. Singh & Co.*

TINTA PRESS SDN. BHD. v. BANK ISLAM MALAYSIA BHD.

[S.C. (Salleh Abas L.P, Syed Agil Barakbah & Wan Hamzah S.C.JJ.) May 13 & December 23, 1986]

[Kuala Lumpur Supreme Court Civil Appeal No. 293 of 1985]

Practice and Procedure – Injunction – Interlocutory mandatory injunction – Application to dissolve and set aside injunction – Application dismissed – Power of Court to grant interlocutory mandatory injunction – Urgent and exceptional case – Balance of convenience – Specific Relief Act, 1950, s. 53 – R.H.C. 1980, O.29, r. 1(2).

Lease – Lease of equipment – Facility granted on Islamic banking business which included profit margin – Breach of agreement – Owner entitled to recover equipment.

In this case the respondents had leased certain printing equipment to the appellants. The appellants having defaulted in payment of the monthly rentals, the respondents brought an action to recover possession of the equipment and to recover the arrears of rent. The respondents also made an *ex parte* application for and obtained a mandatory injunction to enable the respondents to recover possession of the equipment. The appellants then applied to dissolve and set aside the mandatory injunction. This was refused (see [1986] 1 M.L.J. 256) and the appellants appealed.

Held: (1) the court has a discretion to grant an interlocutory mandatory injunction before trial but the discretion must be exercised and an injunction granted only in exceptional and extremely rare cases. The case must be unusually strong and clear in that the court must feel assured that a similar injunction would probably be granted at the trial on the ground that it would be just and equitable that the plaintiff's interest be protected by the immediate issue of an injunction, otherwise irreparable injury and inconvenience would result. Where the case is one of urgency an application can be made *ex parte;*

(2) the learned Judge on the facts and circumstances of the case rightly concluded that this was an exceptional case where the court was justified in granting a mandatory injunction on an *ex parte* application before the trial;

(3) the learned judge rightly concluded from the documents and the affidavit evidence that the agreement in this case was a lease agreement and not a loan agreement;

(4) there was a clear breach of the lease agreement in this case by the appellant and the respondent therefore became entitled to immediate possession of the equipment. The learned Judge was confident that the court would grant a mandatory injunction at the trial of the suit and rightly held that if the injunction had not been granted earlier the respondent would suffer irreparable damage and greater hardship. The balance of convenience was very much in favour of the respondent and the application was one of urgency. There was no unreasonable delay on the part of the respondent in filing the writ and the *ex parte* application for injunction;

(5) this was a case where the learned Judge was more than justified in granting a mandatory injunction on an *ex parte* application.

Cases referred to:

(1) *Wah Loong (Jelapang) Tin Mine Sdn. Bhd.* v. *Chia Ngen Yiok* [1975] 2 M.L.J. 109.
(2) *Sivaperuman* v. *Heah Seok Yeong Realty Sdn. Bhd.* [1979] 1 M.L.J. 150.
(3) *Gibb & Co* v. *Malaysia Building Society Bhd.* [1982] 1 M.L.J. 271, 273.
(4) *Shepherd Homes Ltd.* v. *Sandham* [1971] 1 Ch. 340, 349.
(5) *Credit Corporation (Malaysia) Bhd.* v. *K.M. Basheer Ahmad & Anor.* [1985] 1 M.L.J. 208, 210.

SUPREME COURT.

Dennis Xavier (*Vincent Chandran* with him) for the appellant.

Raja Abdul Aziz Addruse (*Mohamed Noor Haji Don* with him) for the respondent.

Cur. Adv. Vult.

Syed Agil Barakbah S.C.J. (delivering the Judgment of the Court): Earlier we dismissed this appeal with costs and made an order that the deposit of $500/- be paid to the respondent on account of costs. We considered the appeal on two main grounds, *viz.* (1) the legal issue and (2) the factual issue.

As regards (1), the question was whether the

Court has a discretionary power to issue a mandatory injunction on an *ex parte* application under Order 29 rule 1(2) of R.H.C. 1980. We applied the principles cited in several relevant authorities and decided on the facts and circumstances of this case, the Court has such jurisdiction. With regard to (2), on the facts available before the learned Judge, we were satisfied that he had not wrongly exercised his discretion as to merit our interference.

Before elaborating our grounds, we would like to deal with the facts so far disclosed in the affidavits and documents exhibited thereto.

On December 9, 1983, Bank Islam Malaysia Bhd., a limited company incorporated under the Companies Act 1965 (the respondent), by a letter of offer to the appellant, a private company limited by shares under the Companies Act, approved the appellant's application and agreed to provide facilities by issuing letters of credit for the purchase of printing equipment amounting to $3,832,000.00, which would be leased to the appellant, subject to certain conditions as stated in the said letter (WAR 1 page 92 volume 2).

In accordance with the letter of offer, the lease was for a period of seven years commencing from December 30, 1983, and the rentals were payable in advance in the sum of $72,762.40 per month by eighty-four monthly instalments. The appellant had also to pay two rental deposits valued at three months' rental of the machinery for each deposit according to the dates specified at para 11 of the letter of offer. The first deposit was to cover the rental for the first three months. The rentals for the fourth month onwards had to be paid in advance at the beginning of each month. The appellant paid the sum of $105,000.00 by cheque towards the rental deposit on December 9, 1983, and on January 6, 1984, paid a further sum of $113,287.20 towards the same making a total of $218,287.20. However, the appellant had failed to pay further monthly rentals of $72,762.40 per month as agreed, but made only two part-payments of $10,000/- each on April 13, 1984, and July 24, 1984 respectively. The appellant by letter dated March 23, 1984, requested the respondent to allow them to defer four months towards the payment of the rentals. The respondent, however, informed the appellant that they could defer the payment of the deposit instead but not the rentals. On May 5, 1984, the appellant was in arrears of rents to the tune of $175,899.75 as stated in their letter of reminder. On June 28, 1984, the respondent wrote again reminding the appellant that he was in arrears of $245,806.75 in rentals.

On August 2, 1984, they executed a lease of printing equipment agreement (the lease agreement) incorporating some of the terms of the earlier agreement whereby the respondent at the request of the appellant agreed to purchase the said equipment for the purpose of leasing the same to the appellant. The lease was to commence on December 30, 1983, as agreed upon and expressly provided by item (4) to the Schedule of the lease agreement. The respondent became the lessor and the appellant the lessee. The facility granted was based on Islamic banking business which included the appellant's profit margin and was subject to the terms and conditions stated in the lease agreement. By this lease agreement, some of the terms contained in the letter of offer of December 9, 1983, were varied. The rental was now fixed at $69,907 per month payable in advance in respect of the lease term of eighty-four months commencing from December 30, 1983. There is no provision for rental deposits in the lease agreement. Instead it provides for security deposit of $209,721 which was to be paid by the appellant on execution of the lease agreement. It was provided that the security deposit shall be retained by the lessor (*i.e.* the respondent) as security for the due observation and performance by the lessee (*i.e.* the appellant) of the stipulations, terms and conditions of the lease agreement, and the security deposit shall not be treated as payment of rent or any part thereof. Three named persons signed the lease agreement as guarantors for the appellant. It is clear that by August 10, 1984, the appellant was in arrears of rentals due and had not paid the security deposit as agreed in the lease agreement. On that date, the respondent's solicitors wrote a notice demanding payment within seven days. On the appellant's failure to comply with their request, the respondent after making known to the appellant of their intention by letter, took possession of the equipment under the provision of the lease agreement. They succeeded in dismantling and removing one unit and while in the process of removing the second unit, the appellant and his servants or agents closed and locked the premises, thus preventing the respondent from taking possession of the rest of the equipment. Subsequently the respondent filed a writ against the appellant and the three guarantors and on the same day, *i.e.* September 13, 1984, filed the *ex parte* application for mandatory injunction which was granted by the Court on September 25, 1984. Subsequently on October 10 1984, the appellant filed an *ex parte* application to dissolve and set aside the injunction. It was dismissed by Zakaria Yatim J.

The discretionary power of the Court to grant

a mandatory injunction is provided by section 53 of the Specific Relief Act, 1950 (Act 137). By judicial process, the power is extended to the granting of an interlocutory mandatory injunction before trial. Such discretion however must be exercised and an injunction granted only in exceptional and extremely rare cases as was held in *Wah Loong (Jelapang) Tin Mine Sdn. Bhd.* v. *Chia Ngen Yiok*[1] and confirmed by the Federal Court in *Sivaperuman* v. *Heah Seok Yeong Realty Sdn. Bhd.*[2] The case must be unusually strong and clear in that the Court must feel assured that a similar injunction would probably be granted at the trial on the ground that it would be just and equitable that the plaintiff's interest be protected by immediate issue of an injunction, otherwise irreparable injury and inconvenience would result. (See *Gibb & Co.* v. *Malaysia Building Society Bhd.*[3] and *Shepherd Homes Ltd.* v. *Sandham*[4]). Where the case is one of urgency, Order 29 rule 1(2) R.H.C. 1980 allows an application to be made *ex parte*. We are satisfied that the learned Judge on the facts and surrounding circumstances of this case rightly concluded that this was an exceptional case where the Court was justified in granting a mandatory injunction on an *ex parte* application before the trial.

With regard to (2), the main issue raised in the appellant's affidavit was that the lease agreement was in fact a loan agreement. It was denied by the respondent in their affidavit. The learned Judge concluded from the documents attached and the affidavit evidence that it was not so. With respect, we agree on the following grounds:

(1) The printing equipment is owned by the respondent. This fact is expressly provided in very clear terms in the lease agreement. In the third recital, the respondent as the lessor has agreed to purchase the equipment as described in the Schedule for the purpose of leasing the same to the appellant as the lessee. Under Clause 16, it is agreed that the equipment shall remain the property of the respondent. Clause 16 states:

"Nothing herein contained shall confer on lessee any right of property or interest in or to the equipment which shall remain the property of lessor and lessee shall have no right or interest therein otherwise than as bailee."

Under Clause 15(i), the lessee is duty bound to return the equipment in good order to the lessor on the expiry of the lease.

(2) The relationship between the parties is that of lessor and lessee; the respondent being the legal owner of the equipment, thereby retaining the ownership of it while the appellant at whose request the equipment was purchased, has the possession and use of the equipment, subject to the payments of rentals and other requirements as stipulated in the agreement and agreed upon between the parties. (See *Credit Corporation (Malaysia) Bhd.* v. *K.M. Basheer Ahmad & Anor.*[5]).

We are also satisfied of the following:

(1) There was a clear breach of the lease agreement by the appellant. As stated earlier, the appellant defaulted in paying the monthly rentals and the respondent's solicitors sent a notice of demand but to no avail. By virtue of Clause 14 of the lease agreement, therefore, the respondent became entitled to immediate possession of the equipment. That was acted upon by the respondent and as stated earlier, they succeeded only in removing one unit and were prevented from taking possession of the rest by the appellant and their servants or agents.

(2) That at the trial of the suit, the learned Judge was confident that the Court would grant a mandatory injunction against the appellant. On the other hand, if the injunction had not been granted earlier, the respondent would probably suffer irreparable damage and greater hardship.

(3) The balance of convenience was very much in favour of the respondent since the value of the equipment would be reduced considerably and there was a likelihood that the respondent would not be able to recover even half of the money spent in purchasing the equipment.

(4) The application was one of urgency and any delay would cause irreparable damage to the respondent as stated in paragraph (2) above.

(5) The learned Judge came to the conclusion that the respondent had been "helpful and extremely polite" to the appellant. They had attempted to recover the money due to them step by step by acting diligently and prudently. It was only after they had failed to get rentals due from the appellant that they decided to take possession of the equipment according to the terms of the lease agreement. When that failed, they sought legal remedy by filing a writ applying for an injunction. We agree with respect with the learned Judge that there was no unreasonable delay on the part of the respondent in

filing the writ and the *ex parte* application for injunction.

From the above, we are satisfied that this is a case where Zakaria Yatim J. was more than justified in granting a mandatory injunction before the trial on an *ex parte* application.

Order accordingly.

Solicitors: *Dennis Xavier & Co.; Radzi Sheikh Ahmad Noor & Farid.*

DR. NAWAWI MAT AMIN & ORS. v. SYED ALI BIN MOHAMED AL-ATTAS & ORS.

[S.C. (Seah, Hashim Yeop A. Sani & Wan Hamzah S.C.JJ.) November 3, 1986 & January 8, 1987]

[Kuala Lumpur — Supreme Court Civil Appeal No. 363 of 1985]

Administrative Law — Dispute between Federal Malay Chamber of Commerce and its branch, the Johore Malay Chamber of Commerce — Suspension of Johore Chamber — Amendment of Constitution of Federal Chamber.

Societies — Chamber of Commerce — Power to suspend branch — Power to adjourn general meeting of branch — Power to amend Constitution of Chamber of Commerce.

In this case the Johore Malay Chamber of Commerce held its annual general meeting on December 1, 1981. There were incidents at the meeting as a result of which the Federal Malay Chamber of Commerce suspended the Johore Chamber. On February 26, 1983, the Federal Chamber amended its Constitution by incorporating Article 26(2) barring reference to a court of law of any dispute between the Federal Chamber and its branches or members without the consent of the President and requiring such dispute to be referred to the President for his final decision. Subsequently the Johore Chamber purported to call a meeting on August 14, 1983. This was postponed by the Federal Chamber. The respondents as members of the Johore Chamber brought an action for a number of declarations. At the trial the parties agreed that the dispute be confined to five issues as follows:

1) (a) Whether the Federal Committee has the power to postpone the Johore Chamber's Annual General Meeting of August 14, 1983;

   (b) If so whether the power was properly exercised;

2) Whether the amendment to Article 26(2) is valid;

3) Whether Article 26(2) ousted the jurisdiction of the court and is therefore null and void;

4) Whether the plaintiffs can maintain this action in view of Article 26(2) and

5) Whether the suspension of the Johore Chamber in August 1983 was valid.

The learned trial judge answered the first issue in the negative. His answer to the second issue was also in the negative. He declined to decide on the third and fourth issues. His answer to the fifth issue was also in the negative as it was consequential upon the answer to the first issue. The appellants appealed.

Held, dismissing the appeal: (1) the postponement of the meeting by the Federal Committee was lawful and the decision to postpone the Annual General Meeting was properly exercised by the Federal Committee and was made in good faith;

(2) the amendment to the Constitution was passed without any notice given to the Johore Chamber or any of its members and was therefore invalid;

(3) the learned Judge was correct in not answering the third and fourth issues as they were academic in the circumstances;

(4) the suspension of the Johore Committee was validly made under Article 8(6)(g) of the Constitution of the Federal Chamber.

Cases referred to:

(1) *Tan Kah Wich & Ors.* v. *Datuk Phua Cheng Leong & Ors.* [1979] 2 M.L.J. 259.

(2) *Chooa E Pek & Ors.* v. *Un Siang Mead & Ors.* [1982] 1 M.L.J. 267.

(3) *Sharma Lal Chand* v. *Ghan Shyam Rai* [1980] 1 M.L.J. 56.

SUPREME COURT.

Wong Chong Wah (*Zainuddin Ismail* with him) for the appellants.

Raja Abdul Aziz Addruse (*Reginald Vallipuram* with him) for the respondents.

Cur. Adv. Vult.

Hashim Yeop A. Sani S.C.J. (delivering the Judgment of the Court): This appeal arose from a dispute between the Malay Chamber of Commerce, Malaysia and its branch in the State of Johor, that is the Johor Malay Chamber of Commerce. In this judgment the former will hereinafter be referred to as the "Federal Chamber" and the latter as the "Johor Chamber."

The suit in the High Court was taken out by the three respondents as members of the Johor Chamber. They asked for a number of declarations the main ones being:

(1) a declaration that the persons elected as office bearers of the Executive Committee of the Johor Chamber by the meeting held on August 14, 1983, were validly elected;